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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re of Applicant	)	
Shojiro Kawakami et al	)	Art Group: 1753
Serial No.: 09/402,112	)	Examiner: VerSteeg, Steven H
Filing Date: September 29, 1999	)	
Title: THREE-DIMENSIONAL PERIODIC	)	Docket No.: FUK-63
STRUCTURE, ITS FABRICATION	)	Customer No.: 022855
METHOD, AND METHOD OF	)	
FABRICATION FILM	)	Confirmation No.: 5560

PETITION FOR CONSIDERATION OF ENGLISH TRANSLATION OF FOREIGN  
PRIORITY DOCUMENT UNDER 37 CFR § 1.55 (4)

Mail Stop: Petition  
HON. COMMISSIONER FOR PATENTS  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

Responsive to the Final Office Action dated December 4, 2002 and to the  
Advisory Action dated March 7, 2003, Applicant hereby submits the following:

Amendments to the Specification: None

Amendments to the Claims: None

Amendments to the Drawings: None

Remarks/Arguments begin on page 2 of this paper.

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OFFICE OF PETITIONS

Application No.: 09/402,112  
Amendment Dated July 22, 2003  
Reply to Office Action dated: December 4, 2002

Attorney Docket No.: FUK-63

REMARKS

Applicants respectfully petition for the entry and consideration of the translation of the foreign priority document and the accompanying statement that the translation thereof is accurate, as per 37 CFR § 1.55 (4). The Examiner contends that the translation was not timely filed and therefore need not be considered at this juncture in prosecution. As a basis for not considering the translation and the accompanying statement, the Examiner submits that the filing of such a statement verifying the translation is essentially an affidavit and/or declaration under Rule 131 and/or 132.

Applicants respectfully traverse the position taken by the Examiner and submit that the translated priority document and the accompanying verification statement must be considered. As stated previously, contrary to the contention of the Examiner, the filing of the verification statement is a submission under Rule 55 and not under either of Rules 131 or 132. Furthermore, the right of priority is established by law under 35 USC § 119 (a-d), and the procedures for establishing this right of priority to overcome a reference are set forth in MPEP § 201.15.

As stated in MPEP § 201.15, when the priority papers have already been filed, a translation and a statement of accuracy must be filed to perfect the right of priority. Once such a translation and statement have been filed, the Examiner must determine whether Applicant is entitled to the priority date for overcoming a reference. There is nothing in 37 CFR § 1.55 and/or MPEP § 201.15 which indicates any particular circumstances under which a translation of a non-English priority document should not

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be considered when a claim for a priority has already been made and when the priority papers have already been submitted to the U.S. Patent and Trademark Office.

Accordingly, Applicants submit that under 35 USC § 119 (a-d) and 37 CFR § 1.55, Applicants have now properly perfected their right of priority and hereby respectfully request the reconsideration of finally rejected claims 19 and 21 in light of the perfected priority.

The appropriate petition fee of One Hundred and Thirty Dollars (\$130.00) is enclosed herewith.

If the Examiner has any questions or comments that would speed prosecution of this case, the Examiner is invited to call the undersigned at 260/485-6001.

Respectfully submitted,

  
Randall J. Knuth  
Registration No. 34,644

RJK/mdc10

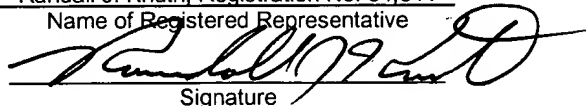
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Customer No. 022855  
RANDALL J. KNUTH, P.C.  
3510-A Stellhorn Road  
Fort Wayne, IN 46815-4631  
Telephone: 260/485-6001  
Facsimile: 260/486-2794

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on: July 22, 2003.

Randall J. Knuth, Registration No. 34,644  
Name of Registered Representative

  
Signature

July 22, 2003  
Date

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